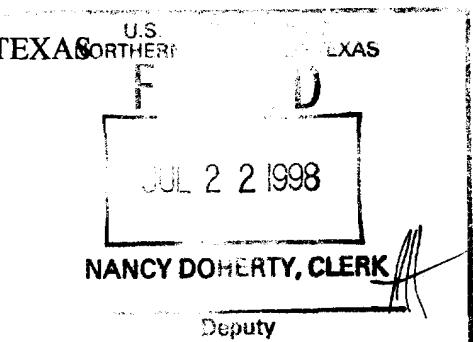


JUL 23 1998
ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION



JESSIE MARTIN,

Plaintiff,

v.

No. 3:98-CV-1293-T

PARKLAND MEMORIAL HOSPITAL, ET AL.,

Defendant.

JUL 23 1998 ENTERED ON DOCKET
PURSUANT
TO F.R.C.P. RULES
58 AND 79a

ORDER GRANTING MOTION TO DISMISS
AND REMANDING CASE TO STATE COURT

Before the Court is the motion of the government to dismiss the United States of America as a defendant, and to remand this action to state court. After consideration, the Court is of the opinion that the motion should be granted.

Plaintiff originally filed this lawsuit in state court. The petition named as a defendant, among others, John Josephs, M.D. Because Josephs was a federal employee at the time, the government removed the action to this Court, and the United States was substituted as a defendant in place of Josephs. The government now seeks to dismiss the claims against it for lack of subject matter jurisdiction.

For a federal district court to have jurisdiction over a claim against a federal employee acting within the scope of his employment, the Federal Tort Claims Act requires that the plaintiff file an administrative claim. *See* 28 U.S.C. § 2675(a). Both parties agree that the

Federal Tort Claims Act applies, that no administrative claim was filed, and that the government should be dismissed. Furthermore, the Court agrees with the parties that it lacks subject matter jurisdiction over Plaintiff's claims against the United States, and that the government's motion to dismiss should be granted. FED. R. CIV. P. 12(b)(1).

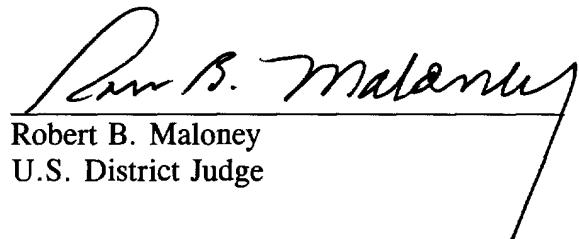
The only basis for removing this action to this Court was the substitution of the United States as a defendant. Because the United States is dismissed, the parties agree that this action should be remanded to state court.

It is therefore **ORDERED** that the government's Motion to Dismiss the United States, filed on June 16, 1998, is granted, and Plaintiff's claims against the United States are dismissed without prejudice.

It is **FURTHER ORDERED** that the government's Motion to Remand, filed on June 16, 1998, is granted.

It is **FURTHER ORDERED** that this case is remanded to the 116th Judicial District Court, Dallas County, Texas.

Signed this 22 day of July, 1998.



Robert B. Maloney
U.S. District Judge